

Title	GENERAL MANAGER RECRUITMENT PANEL
Agenda Number	15.017/21*
Strategic Plan Reference	5
File Reference	000001
Author	Director Legal and Governance Services
Responsible Officer	Mayor
Reporting Brief	The Director Legal and Governance Services presenting a report on appointment of a new General Manager Recruitment Panel
Attachments	A. Recruitment Panel Councillor Appointment Process

Background

1. At the ordinary meeting of 31 March 2021 the Council appointed a General Manager Recruitment Panel consisting of the Mayor and Deputy Mayor and Councillors Newell and Wilson who were elected by ballot.
2. Councillor Wilson's office of Councillor is now vacant meaning that there is a vacancy on the Panel.
3. A report to fill the vacancy was provided to the Council for consideration at the 23 June 2021 ordinary meeting.
4. The vacancy was not filled at the meeting and by resolution No. 15.016/21* Council resolved as follows:

"That Council call a Special Council Meeting immediately after the new Councillor is appointed by the Tasmanian Electoral Commission and that appointments to the General Manager Recruitment Panel be made at this Special Council Meeting."
5. This Special Meeting has been called in response to the resolution and the purpose of this Report is to consider appointment of a new Recruitment Panel.

Council Policy

6. Council established the Panel as part of the General Manager recruitment process pursuant to resolution No. 20.022/21A* at the meeting of 31 March 2021.
7. The process for election of Panel members is generally in accordance with the process set out in the Council's *Governance Framework* included as Attachment A to this Report.

Legislative Requirements

8. Section 61 of the *Local Government Act 1993* (the Act) provides for the appointment of the General Manager, relevantly:
 - A council is to appoint a person as general manager of the council for a term not exceeding 5 years on terms and conditions it considers appropriate.
 - In appointing a person as general manager of the council, a council is to do so in accordance with any relevant order made under section 61A.
 - If there is a vacancy in the position of general manager and the council chooses to invite applications for that vacancy, the council is to place, in a daily newspaper circulating in the municipal area, a public notice inviting such applications.
9. No orders have been made under section 61A of the Act.
10. As provided under sections 27 and 28 of the Act, the Mayor is to lead and participate in the appointment of the General Manager, and the Councillors as a collective are to appoint the General Manager.

Risk Implications

11. The key risk inherent with any recruitment is inexperience of the recruiting team and the dependence on experts to select the best candidate.
12. This risk is addressed by engaging suitably qualified experts in the recruitment field to provide advice and support the Panel. Consultants Red Giant have been engaged for that purpose.
13. Availability of Panel members to attend at meetings and candidate interviews is also a risk which could delay the recruitment process. Panel members need to be conscious of the time needed to perform their roles.
14. The issue of membership of the Deputy Mayor on the Committee has also been raised as part of discussion leading to this meeting and is a risk in the absence of the Mayor for any reason.
15. When the Panel was established the advice provided was as follows:

“The process recommends establishment of a recruitment panel. The Panel is recommended to consist of the Mayor (as leader of the process under section 27 of the Act), Deputy Mayor (by way of office as the Deputy Mayor may be called to act as the Mayor at any time in case of any unplanned absence of the Mayor) and two Councillors elected around the table.”
16. If the Mayor becomes unavailable and the Deputy Mayor steps in to Acting Mayor, then the Deputy Mayor would assume the responsibility of leading the recruitment during the period of absence. The Mayor can only delegate the responsibility to lead the appointment of the General Manager to the Deputy Mayor as set out in section 27(1)(g) of the Act.

17. As it was, this exact circumstance occurred when the Panel was formed and the Mayor was on leave whilst campaigning as a candidate at the State Election. The Deputy Mayor led the process until the Mayor returned and resumed leading the process.
18. If the Council does not wish to have the Deputy Mayor have a position by virtue of office for the above reasons, and the Deputy Mayor is not elected to the Panel, it must be understood that the Deputy Mayor may join the Panel as a result of the absence of the Mayor. This may cause some disruption and delay to the process and lack of continuity to the Panel.

Engagement

19. Engagement associated with this decision will be undertaken at Inform Level by inclusion within the Council meeting Minutes that will be available to the public on the Council's website and at the Customer Service Centre.

Human Resource and Financial Implications

20. There are no specific human resource implications associated with appointment of Panel members.
21. Any Panel member performing the roles and functions of the Panel is entitled to expenses under the Council's Policy.

Discussion

22. It is understood from the discussion at the June meeting that the Council will establish a new recruitment panel.

The Current Panel

23. The current Panel consisted of the Mayor and Deputy Mayor, Councillor Newell and a vacant position previously occupied by former Councillor Wilson.
24. It was raised during discussion that the current panel was deficient and not legal due to the fact that former Councillor Wilson was ineligible to be on the panel from 12 April 2021.
25. To provide some clarification:
 - The date that former Councillor Wilson was ineligible to be a Councillor and therefore his seat was vacant under Schedule 5 of the Act was on or about 13 May 2021. This was 30 days after he changed his enrolment, but he still had an opportunity to become registered on the General Manager's Roll.
 - There were no meetings or actions of the Panel between 13 May and 23 June.
 - Even if meetings were held it would not have meant that any actions were unlawful. Section 342(2)(b) of the Act provides for validity of proceedings and specifically states that an act or proceeding of a Council is valid even if a Councillor was disqualified from acting as a Councillor.

26. There are therefore no concerns as to the lawful actions of the Panel to date as a consequence.
27. The current Panel has undertaken the process for engaging an external consultant and finalising the documents for advertising of the position.
28. The new Panel will need to take the process through from short listing candidates, interviewing and making recommendations to Council.

Panel Membership

29. There was some discussion at the June Council meeting as to the membership of the Panel, particularly whether or not the Deputy Mayor should be on the Panel as a result of holding the office of Deputy Mayor.
30. The advice provided is set out in the Risk Implications section of this Report. This advice remains relevant for the purposes of this Report.
31. Advice from the CEO of the Local Government Association of Tasmania (LGAT) was also provided in argument to support the motion to bring the Panel membership back to the Council.
32. The Acting General Manager has taken the opportunity to clarify the advice sought and given from the CEO, whom listened to debate at the meeting and provided as follows:

"I was contacted by Councillor Campbell regarding the process for the establishment of council committees, specifically in this case the General Manager recruitment committee. I noted that S.23 of the Local Government Act 1993 (the Act) provides for the establishment of a council committee and that such a committee can be established "on such terms as it thinks fit". I was clear in my advice that the establishment of council committees is a decision of council, also noting that because of this the process can differ from council to council in circumstances where a committee vacancy arises.

I note that throughout the council debate there was concerns raised by other councillors that the process undertaken by Huon Valley Council was unlawful. While this assertion was not directly attributed to me, I wish to be clear that at no stage in my advice did I indicate the process undertaken by council initially was unlawful. In fact I was unaware of the original process undertaken by council throughout my discussion with Councillor Campbell. I was asked if the Deputy Mayor was "automatically" on the General Manager recruitment committee, to which I responded no, as the Act clearly indicates that committee membership is a matter for the council.

I note through reviewing the council debate that previously in a Closed session council was provided advice and a recommendation regarding the General Manager recruitment committee, which included having the Mayor and Deputy Mayor as members. I note the reasoning provided for this approach during the debate and support that reasoning. Although, as indicated above ultimately the membership is entirely a matter for the council."

33. Other than the fact that Council is not establishing a Committee under section 23 of the Act, there is nothing raised from the LGAT CEO that is in conflict with or changes Officer advice supporting this Report.
34. The Officer recommendation has not altered from recommending a Panel made up of the Mayor, Deputy Mayor and two Councillors elected for that purpose.
35. It is open for the Council if it wishes to change the way in which the Panel is constituted however the Mayor's involvement is required to meet the Act. The risk associated with the absence of the Mayor and the Deputy Mayor not being on the Panel is discussed in the risk implications section of this Report.
36. There has also previously been some discussion in relation to the number of Councillors on the Panel, and whether or not it should be limited to four.
37. The purpose of the Panel is to undertake a process and make recommendations to the Council. The Panel cannot make any decision on behalf of the Council.
38. Any membership of the Panel in excess of four would constitute a potential majority at a Council meeting effectively meaning that the Council meeting to appoint the new General Manager could be perceived or actually to be a rubber stamp to the appointment. This could effectively sideline the Councillors who were not on the Panel from actively participating in what is their role under section 28 of the Act.
39. Should Council wish to have a Panel greater than four then it is simply suggested that the Panel is made up of all nine Councillors. Whilst such a proposition is possible it is also considered to be unwieldy and impractical in the sense of ensuring that all Councillors are able to attend for the interviews and subsequent meetings prior to formalising the recommendation to the Council.
40. The appointment of Councillors to the Panel should be in accordance with the process set out in the Council's *Governance Framework* as set out in Attachment A to this Report as varied to allow for nominations from around the table at the meeting. It is important to note that Councillors nominated to the panel will need to be able to commit the time necessary to undertake and complete the process.

Conclusion and Recommendation

41. It will be recommended to undertake the process to appoint the new Panel as outlined in Attachment A to this Report.

15.017/21*

MOTION

CR LOVELL

CR PRINCE

That:

- a) **The report on appointment of a new General Manager Recruitment Panel be received and noted.**
- b) **A new General Manager Recruitment Panel is established consisting of the Mayor, Deputy Mayor and two Councillors to undertake the recruitment process and perform the roles and functions as set out in Attachment A to this Report.**
- c) **The Councillor members of the Recruitment Panel be elected at this meeting through the process as set out in Attachment A to this Report.**

15.017/21*

AMENDMENT

CR CLARK

CR CAMPBELL

That:

- a) **The report on appointment of a new General Manager Recruitment Panel be received and noted.**
- b) **A new General Manager Recruitment Panel is established consisting of the Mayor and three Councillors to undertake the recruitment process and perform the roles and functions as set out in Attachment A to this Report.**
- c) **The Councillor members of the Recruitment Panel be elected at this meeting through the process as set out in Attachment A to this Report.**

THE AMENDMENT WAS PUT AND CARRIED

Councillors Newell, Gibson, Campbell, O'May and Clark voted for the amendment and Councillors Enders, Doyle, Prince, Lovell, voted against the amendment.

THE AMENDMENT BECAME THE MOTION AND WAS PUT AND CARRIED

Councillors Newell, Gibson, Campbell, O'May and Clark voted for the motion and Councillors Enders, Doyle, Prince, Lovell, voted against the motion.

THE COUNCILLOR APPOINTMENT ELECTION PROCESS WAS THEN UNDERTAKEN FOR THE RECRUITMENT PANEL

Nominations were received from:

Cr Doyle, Cr Newell, Cr Campbell, Cr Lovell and Cr Clark

The ballot was held with the following votes cast:

Cr Doyle	-	11
Cr Newell	-	12
Cr Campbell	-	15
Cr Lovell	-	06
Cr Clark	-	10

Cr's Doyle, Newell and Campbell were declared elected.